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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,434	03/03/2004	Charles T. Hatch	146392	2433

23413 7590 03/21/2006

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EXAMINER	
DESTA, ELIAS	

ART UNIT	PAPER NUMBER
2857	

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/708,434	HATCH, CHARLES T.
	Examiner	Art Unit
	Elias Desta	2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 January 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *03 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *8/29/2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Detailed Action

Objections/Reminder

Abstract

1. The abstract of the disclosure is objected to because of the following minor informality:

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc. Appropriate correction is required.

Specification

2. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Explanation of Rejection

Claim rejection - 35 U.S.C. 101

3. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. *In reference to claims 1-14*: the claimed invention lacks patentable utility. There does not appear to be practical application, i.e., no useful, concrete tangible result, because there are no physical signals applied to real world device in the claims.

A claim is limited to a practical application when the method, as claimed, produces a concrete, tangible and useful result; i.e., the method recites a step or act of producing something that is concrete, tangible and useful. See AT &T, 172 F.3d at 1358, 50 USPQ2d at 1452. Likewise, a machine claim is statutory when the machine, as claimed, produces a concrete,

tangible and useful result (as in State Street, 149 F.3d at 1373, 47 USPQ2d at 1601) and/or when a specific machine is being claimed (as in Alappat, 33 F.3d at 1544, 31 USPQ2d at 1557 (in banc).

For example, a computer process that simply calculates a mathematical algorithm that models noise is nonstatutory. However, a claimed process for digitally filtering noise employing the mathematical algorithm is statutory.

The claims constitute a model where the input to the model is a series of force waveforms applied to the device. These waveforms are compared with values that are generated with a well-behaved function to produce a desired frequency values. The steps noted in the claims do not produce a tangible or useful result where the outcome can be utilized for real, concrete and tangible application. The input applied to the device and the output obtained from the system simply characterizes a model that correlates a force vector with a corresponding frequency waveform. "Solving a dynamic model of the device utilizing a subset of the fist plurality of spectral amplitude values … to output a desired output waveform associated with the device" further refines the characterization of the model.

The claimed invention lacks patentable utility. The claims constitute a model with no practical application, i.e., no

useful, concrete and tangible result, because no physical signal applied to real world device in the claims.

Response to Argument

5. Applicant's arguments filed on January 9, 2006 have been fully considered but they are not persuasive.

As noted above, the claims constitute a model where the input to the model is a series of force waveforms applied to the device. These waveforms are compared with values that are generated with a well-behaved function to produce a desired frequency values. The steps noted in the claims do not produce a tangible or useful result where the outcome can be utilized for real, concrete and tangible application. The input applied to the device and the output obtained from the system simply characterizes a model that correlates a force vector with a corresponding frequency waveform. "Solving a dynamic model of the device utilizing a subset of the first plurality of spectral amplitude values … to output a desired output waveform associated with the device" further refines the characterization of the model. The claimed invention lacks patentable utility. The claims constitute a model with no practical application, i.e., no useful, concrete and tangible result, because no physical signal applied to real world device in the claims.

Further, examiner notes that Applicant has not responded to the objections raised by the Examiner in the first office action. Appropriate response is required.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elias Desta whose telephone number is (571)-272-2214. The examiner can normally be reached on M-Th (8:30-7:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S. Hoff can be reached on (571)-272-2216. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Elias Desta
Examiner
Art Unit 2857

- e.d.

March 15, 2006

HAL WACHSMAN
PRIMARY EXAMINER
AU 2857